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No. 96-8422

In the Supreme Court of the United States

OCTOBER TERM, 1997

SILASSE BRYAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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60 pp

QUESTION PRESENTED

Whether a conviction for willfully violating 18 U.S.C. 922(a)(1)(A), which prohibits dealing in firearms without a federal license, requires the jury to find that the defendant had specific knowledge of the federal firearms licensing requirement he violated, or whether it is sufficient that the jury find that he had general knowledge that his conduct was unlawful.

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OPINION BELOW

The opinion of the court of appeals (J.A. 20-26) is reported at 122 F.3d 90.

JURISDICTION

The judgment of the court of appeals was entered on February 10, 1997. The petition for a writ of certiorari was filed on March 31, 1997. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent parts of Sections 921(a)(21)(C), 922(a)(1)(A), and 924(a)(1) of Title 18 of the United States Code are reprinted in the appendix to this brief.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted on one count of willfully dealing in firearms without a license, in violation of 18 U.S.C. 922(a)(1)(A) and 924(a)(1)(D), and one count of conspiracy to deal in firearms without a license, in violation of 18 U.S.C. 371. J.A. 21. Petitioner was sentenced to 57 months' imprisonment, to be followed by three years' supervised release. *Ibid.* The court of appeals affirmed. J.A. 26.

1. a. In November 1992, petitioner traveled from New York City to Columbus, Ohio, to stay at the home of Deloras Tillman. Tr. 13-15. Petitioner's brother, who was an acquaintance of Tillman's, had asked Tillman if petitioner could come and stay with her, and Tillman had agreed. Tr. 10-11. Petitioner traveled to Columbus to "make some money." Tr. 11. At that time, Ms. Tillman and others were selling up to one kilogram of cocaine per week from Ms. Tillman's home. Tr. 6-8.

After petitioner's arrival, he asked Tillman to purchase some guns for him, ostensibly because he lacked the picture identification necessary to make firearms purchases in Ohio. Tr. 16-17. Tillman agreed, and petitioner went with her to a Columbus gun store, gave her approximately $300, and selected two Lorcin .380 pistols for her to purchase. Tr. 18-19, 24-25. Tillman purchased the two pistols, using an identification card that contained an incorrect name, address, and social security number. Tr. 20-21. Tillman used the same false name and address when filling out a form at the gun store. Tr. 23-24. In addition, Tillman falsely claimed on the form that she had never been convicted of a felony. Tr. 24. In fact, Tillman had been convicted in 1990 for felony theft. Tr. 6, 24.

After they left the gun store, Tillman immediately gave the pistols to petitioner. Tr. 25. Petitioner placed the guns in a locked room in Tillman's residence and left for New York City the next day. Tr. 26-27. When he departed, petitioner was carrying a duffel bag. Tr. 28. Tillman never saw the pistols again. *Ibid.* Petitioner did not pay Tillman a fee for purchasing the pistols. Tr. 34.

Although petitioner returned to stay with Tillman approximately five more times, he did not ask her to buy guns for him again, because he knew that she was no longer willing to do so. Tr. 29, 31. Petitioner did ask two of Tillman's acquaintances to make such purchases, but they refused. Tr. 30-31. Petitioner at one point explained to Tillman that he was taking guns to New York, to sell them for a profit. Tr. 30. Petitioner also told Tillman that he was buying guns in Ohio because it was unlawful to buy guns in New York without a license. *Ibid.*

b. On February 10, 1993, petitioner was introduced to one of Tillman's neighbors, Nicole Bradley. Tr. 75, 81, 84, 102. Petitioner, whom Bradley knew only as "Uzi," asked Bradley whether she would purchase guns for himself and another man whom Bradley knew only as "Oz." Tr. 82. When she assented, the two drove with her to a Columbus gun store, where petitioner gave her money and instructed her to purchase three Lorcin .380 pistols that he selected. Tr. 81-86. In filling out a form in connection with the purchase, Bradley falsely stated that she was not unlawfully using controlled substances. Tr. 85. In fact, Bradley was addicted to crack cocaine. Tr. 78.

Later that same day, Bradley purchased two more Lorcin .380 pistols for petitioner at a second gun store. Tr. 86-87. Bradley gave all five of the pistols she purchased to petitioner, and never saw them again. Tr. 86, 88-89. Petitioner paid Bradley $40 for purchasing the guns. Tr. 88-89.

The next day, petitioner's accomplice, "Oz," asked Bradley to purchase another weapon. Tr. 89. Bradley did so, once again purchasing a Lorcin .380 pistol. Tr. 89-91. Although petitioner did not accompany Bradley when she bought that pistol, he subsequently paid her an unspecified amount for purchasing it. Tr. 92.

Two weeks later, on February 25, 1993, petitioner asked Bradley to purchase additional weapons. Tr. 92, 94-96. Because she had already purchased so many guns for petitioner, Bradley asked petitioner what he was doing with the guns. Tr. 92. Petitioner explained that the guns were being taken to New York, where they were sold for $300. *Ibid.* Bradley asked petitioner if she would get in trouble for purchasing the guns for him, but petitioner assured Bradley that the serial numbers would be filed off the guns, so that they could not be traced back to her. Tr. 93. Bradley agreed to buy additional guns for petitioner, and bought four Lorcin .380 pistols at two different gun stores on that day. Tr. 93-97. Petitioner paid Bradley $40 or $50 for buying the guns. Tr. 97.

Finally, on the next day, Bradley bought two more Lorcin .380 pistols for petitioner. Tr. 98-100. Petitioner paid her $40 or $60 for making the purchase. Tr. 100. Bradley made no further purchases for petitioner. *Ibid.*

c. At least six of the pistols that Tillman and Bradley bought for petitioner were subsequently recovered by the police in New York City. Tr. 147-

149, 152, 156, 165, 209. The weapons were traced back to the purchasers and, ultimately, to petitioner. Tr. 171. Petitioner was arrested and subsequently confessed that he had enlisted the assistance of several women in Ohio to purchase pistols for him; that he paid those women $50-75 dollars for buying the pistols; that he and accomplices had transported the pistols to New York for resale; and that he had sold the pistols at "weed spots," or "marijuana locations," in his Brooklyn neighborhood, charging $500 for each pistol. Tr. 180-184.

Records from the Bureau of Alcohol, Tobacco and Firearms established that petitioner had not been issued a federal license to deal in firearms. Tr. 185-187.

2. Petitioner was charged with violating 18 U.S.C. 922(a)(1)(A), which forbids dealing in firearms by anyone other than a licensed dealer. Under 18 U.S.C. 924(a)(1)(D), anyone who "willfully" violates certain provisions, including Section 922(a)(1)(A), is subject to fine and imprisonment.

Petitioner asked the trial court to instruct the jury that it could find petitioner guilty only if it found that "with the actual knowledge of the federal firearms licensing laws [petitioner] acted in knowing and intentional violation of them." J.A. 17. Petitioner also requested that the jury be instructed that it could return a guilty verdict only if it found that petitioner "acted with the knowledge that it was unlawful to engage in the business of firearms distribution lawfully purchased by a legally permissible transferee or gun purchaser." *Ibid.*

The district court declined to give the requested instructions. J.A. 18. Rather, it instructed the jury that:

> A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he must act with the intent to do something that the law forbids.

J.A. 18-19. Further, with respect to the willfulness element of the offense of dealing in firearms without a license, the trial court instructed:

> In this case, the government is not required to prove that [petitioner] knew that a license was required, nor is the government required to prove that he had knowledge that he was breaking the law. However, the government must prove that [petitioner] acted willfully. In order to satisfy this element, the government must prove that [petitioner] acted knowingly and purposely and that [petitioner] intended to commit an act which the law forbids.

J.A. 19.

3. Petitioner appealed, arguing *inter alia* that the district court erred by refusing to instruct the jury that it could find him guilty only if it found that he was actually aware that federal law required him to have a license. Pet. C.A. Br. 25. Relying on its earlier decisions in *United States* v. *Collins*, 957 F.2d 72 (2d Cir.), cert. denied, 504 U.S. 944 (1992), and *United States* v. *Ali*, 68 F.3d 1468 (2d Cir. 1995), the court of appeals affirmed. J.A. 21-22. As the court explained, its earlier cases had rejected the contention that a conviction for unlawful dealing in firearms requires proof that the "defendant had specific knowledge of the statute he is accused of violating." J.A. 21 (quoting *Ali*, 68 F.3d at 1473). Rather, the court explained, what is required is proof that "the defendant's conduct was knowing and purposeful and that the defendant intended to commit an act which the law forbids." J.A. 21 (quoting *Collins*, 957 F.2d at 76). See also *United States* v. *Allah*, 130 F.3d 33, 37-41 (2d Cir. 1997) (*Collins* requires proof that "the defendant knew generally that his conduct was unlawful"), petitions for cert. pending, Nos. 97-6915 & 97-7418. Concluding that there was ample such evidence in the present case, the court of appeals affirmed. J.A. 22-23.

4. This Court granted certiorari limited to the questions whether a conviction for willfully dealing in firearms without a license, in violation of 18 U.S.C. 922(a)(1)(A), requires proof that the defendant had actual knowledge of the federal firearms licensing requirement, and whether the district court erred by refusing to so instruct the jury. J.A. 27, *Bryan* v. *United States*, 118 S. Ct. 622 (1997); Pet. i.[1]

SUMMARY OF ARGUMENT

Section 924(a)(1)(D) of Title 18 makes it an offense when a person "willfully violates" federal firearms law by, *inter alia*, engaging in the business of dealing in firearms without a license. The willfulness element requires proof that the defendant was generally aware that his conduct was unlawful. It does not,

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[1] In his brief on the merits, petitioner states that the first issue presented is whether there was sufficient proof of willfulness to support the conviction in this particular case. Pet. Br. i. That question was not presented in the petition, and we do not understand it to be "fairly included" within the issues upon which certiorari was granted. Sup. Ct. R. 14.1(a). Moreover, petitioner does not discuss the question in his brief. We therefore do not address the point.

however, require proof that the defendant had knowledge of the specific provision of federal law—the licensing requirement—that he was violating.

The word "willfully," as this Court has often noted, draws its meaning from its statutory context. Consistent with the general norm that ignorance of the law is not a defense, the word "willfully" ordinarily does not require any proof that the defendant had knowledge of the law or that his actions were unlawful. In some settings, it means simply that the defendant acted intentionally, voluntarily, or deliberately. See, *e.g.*, *Browder* v. *United States*, 312 U.S. 335 (1941). More often, the Court has required proof of bad purpose or evil motive to show willfulness in a criminal case—again, however, without requiring proof of knowledge of the law. See *Screws* v. *United States*, 325 U.S. 91 (1945). Only in two contexts has the Court held that the willfulness element of a criminal statute requires knowledge of illegality. See *Cheek* v. *United States*, 498 U.S. 192 (1991) (criminal tax laws); *Ratzlaf* v. *United States*, 510 U.S. 135 (1994) (currency structuring laws). Those cases do not hold, however, that willfulness generally requires knowledge of specific legal duties.

The structure and purpose of federal firearms law demonstrate that a defendant's knowledge or awareness of the general unlawfulness of his conduct satisfies the willfulness requirement, and that a showing of specific knowledge of federal requirements is not required. Because certain violations of federal firearms law may be punished criminally upon proof of a "knowing" violation, see 18 U.S.C. 924(a)(1)(A), (B), and (C), the willfulness requirement in Section 924(a)(1)(D) demands more than simply that the defendant was aware of his actions. But it is

hardly necessary to jump to the highest mental state known to the law—knowledge of the specific provision of law being violated—in order to give "willfully" a distinctive meaning. A requirement that the defendant have general knowledge of the unlawfulness of his conduct is sufficient to meet that objective.

There is no risk that, absent a requirement that the government establish a defendant's specific knowledge of the law, the criminal prohibition here might ensnare the innocent. There is a long history of regulation of commerce in firearms, and the federal firearms-dealers licensing requirement is limited to dealers who regularly engage in the business of selling firearms for a profit. Thus, the statute does not sweep in the casual trader or law-abiding gun owner. By contrast, imposing the requirement on the government to show specific knowledge of federal licensing law could frustrate law enforcement efforts to combat the unlawful firearms trade. Underground firearms dealers—who often supply guns to drug dealers, violent criminals, or others who cannot lawfully acquire them—are not likely to consult federal law before engaging in their trade, or even to know whether it is federal, state, or local law they are violating. Yet such dealers are generally aware (as revealed by actions such as using straw purchasers or filing off serial numbers) that their actions are illicit. Neither the structure of Section 924 and its related provisions; cases addressing "willfully" in other federal statutes; the legislative history of the provisions at issue; nor the rule of lenity justifies a construction of "willfully" that would immunize such clandestine dealers from prosecution.

Under a proper understanding of the willfulness requirement, the jury instructions in this case were

sufficient. Those instructions required the jury to find, before returning a verdict of guilty, that petitioner acted "intentionally and purposely and with the intent to do something the law forbids, that is with the bad purpose to disobey or to disregard the law." The instructions also informed the jury that it was not required to find that petitioner was "aware of the specific law or rule" he violated, that he "knew that a license was required," or that he "knew that he was breaking the law" (*i.e.*, the specific licensing law at issue). Taken as a whole, those instructions protected petitioner against conviction unless the jury concluded that he had general knowledge that he was violating the law, but made clear that he need not be shown to have specific knowledge of federal firearms licensing law.

ARGUMENT

A DEFENDANT IS GUILTY OF WILLFULLY VIOLATING FEDERAL FIREARMS LAW BY ENGAGING IN UNLICENSED FIREARMS DEALING WHEN HE HAS GENERAL KNOWLEDGE THAT HIS CONDUCT IS UNLAWFUL, EVEN IF HE LACKS SPECIFIC KNOWLEDGE OF FEDERAL LICENSING REQUIREMENTS

Section 922(a)(1)(A) of Title 18, enacted as part of the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, makes it unlawful for any person except a licensed importer, manufacturer, or dealer "to engage in the business of importing, manufacturing, or dealing in firearms." A defendant who "willfully violates" that provision by dealing in firearms without a license commits a criminal offense. 18 U.S.C. 924(a)(1)(D).

The issue in this case is whether, to establish that a defendant willfully dealt in firearms without a license, the government is required to prove that the defendant had specific knowledge of the federal licensing requirement, or whether instead it suffices for the government to prove that the defendant acted with a general knowledge or awareness that his conduct was unlawful. We submit that the requisite mental element is satisfied by proof that the defendant acted with a general knowledge that his conduct was unlawful. That conclusion is supported by the background principle that ignorance of the law is not a defense, by this Court's cases interpreting the term "willfully" in other contexts, and by the structure, purpose, and legislative history of Sections 922(a)(1)(A) and 924(a)(1)(D).[2]

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[2] The Second Circuit has held that a conviction for dealing in firearms without a license requires proof "that the defendant knew generally that his conduct was unlawful." *United States* v. *Allah*, 130 F.3d 33, 38 (1997), petitions for cert. pending, Nos. 97-6915 & 97-7418. The First Circuit agrees. See *United States* v. *Andrade*, No. 96-2309, 1998 WL 32345, at *4-*6 (Feb. 3, 1998) ("Nothing in the traditional willfulness instruction, nor in its underlying purpose, requires that the defendant possess specific knowledge of the statutory provision that makes his conduct unlawful."). One court of appeals has held, to the contrary, that the government is required to prove that the defendant had specific knowledge of the licensing requirement. See *United States* v. *Sanchez-Corcino*, 85 F.3d 549, 553-554 (11th Cir. 1996). One other court of appeals has indicated that the government is required to prove knowledge of illegality, without clearly indicating whether specific knowledge of the licensing requirement, as opposed to general knowledge of illegality, is required. See *United States* v. *Obiechie*, 38 F.3d 309, 315 (7th Cir. 1994) (requiring proof that the defendant acted with "knowledge of the law").

A. Proof Of Willfulness Does Not Normally Require Proof Of Specific Knowledge Of The Law

This Court has repeatedly recognized that "'[w]illful' * * * is a 'word of many meanings' and 'its construction [is] often . . . influenced by its context.'" *Ratzlaf* v. *United States*, 510 U.S. 135, 141 (1994) (quoting *Spies* v. *United States*, 317 U.S. 492, 497 (1943)). In defining the term, however, the Court has paid heed to "the venerable principle that ignorance of the law generally is no defense to a criminal charge." *Ratzlaf*, 510 U.S. at 149. See also *Cheek* v. *United States*, 498 U.S. 192, 199 (1991) ("The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system[,]" and the Court has applied that rule "in numerous cases construing criminal statutes.") (citing cases). Thus, although the Court's cases have defined the term "willfully" in a variety of different ways, those cases make clear

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Three courts of appeals have considered the proper interpretation of the term "willfully" for purposes of other violations of the Gun Control Act that are governed by Section 924(a)(1)(D)'s willfulness requirement. All three require proof that a defendant was aware that his conduct was unlawful, but the courts appear to vary with respect to the degree of specificity of knowledge they require. See *United States* v. *Rodriguez*, 132 F.3d 208, 210-212 (5th Cir. 1997) (unlicensed sale of firearms to an out-of-state resident, in violation of 18 U.S.C. 922(a)(5)); *United States* v. *Hayden*, 64 F.3d 126, 130, 133 (3d Cir. 1995) (receipt of a firearm while under felony indictment, in violation of 18 U.S.C. 922(n)); *United States* v. *Hern*, 926 F.2d 764, 767 (8th Cir. 1991) (failure to keep proper records, in violation of 18 U.S.C. 922(b)(5), and conspiracy to sell firearms to nonresidents, in violation of 18 U.S.C. 371, 922(b)(3)). In our view, a single definition of "willfully" should govern all prosecutions under Section 924(a)(1)(D).

that proof of willfulness does not normally require proof of specific knowledge of the law.

1. In some contexts, the Court has held, "willful" means only "intentional" or "voluntary." See, *e.g.*, *Browder* v. *United States*, 312 U.S. 335, 340-342 (1941) ("the word 'willful' often denotes an intentional as distinguished from an accidental act"); *United States* v. *Illinois Cent. R.R.*, 303 U.S. 239, 243 (1938); cf. *McLaughlin* v. *Richland Shoe Co.*, 486 U.S. 128, 133 (1988) ("In common usage the word 'willful' is considered synonymous with such words as 'voluntary,' 'deliberate,' and 'intentional.'"); *Smith* v. *Wade*, 461 U.S. 30, 40 n.8 (1983).[3]

More frequently, at least in the context of criminal statutes, the Court has interpreted "willfully" to mean "with a 'bad purpose.'" *Heikkinen* v. *United States*, 355 U.S. 273, 279 (1958). See also, *e.g.*, *Screws* v. *United States*, 325 U.S. 91, 101 (1945) (opinion of Douglas, J.) ("'when used in a criminal statute ["willful"] generally means an act done with a bad purpose' * * * [or an] evil motive") (quoting *Illinois Cent. R.R.*, 303 U.S. at 394); *United States* v. *Murdock*, 290

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[3] See also, *e.g.*, *American Sur. Co.* v. *Sullivan*, 7 F.2d 605, 606 (2d Cir. 1925) (L. Hand, J.) ("The word 'willful,' even in criminal statutes, means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law."); Model Penal Code § 2.02(8) (1985) ("A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears."); 1 E. Devitt et al., *Federal Jury Practice and Instructions* § 17.05, at 629 (4th ed. 1992) (defining "willfully" to mean "knowingly, deliberately and intentionally as contrasted with accidentally, carelessly, or unintentionally") (bracketed material omitted).

U.S. 389, 394 (1933) ("willfully" "generally means an act done with a bad purpose * * * [or] without justifiable excuse"); *Felton* v. *United States*, 96 U.S. 699, 702 (1878) ("Doing or omitting to do a thing knowingly and wilfully, implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it. 'The word "wilfully,"' says Chief Justice Shaw, 'in the ordinary sense in which it is used in statutes, means not merely "voluntarily," but with a bad purpose.' 'It is frequently understood' says Bishop, 'as signifying an evil intent without justifiable excuse.'") (citations omitted).

One way in which "evil intent" or "bad purpose" can be established is through proof that the defendant acted either with knowledge that his conduct was unlawful or with reckless disregard for the possibility that his conduct was unlawful. See, *e.g.*, *Murdock*, 290 U.S. at 394-395 ("The word [*i.e.*, "willfully"] is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act.") (citations omitted). The Court has relied upon this kind of "bad purpose" in interpreting the term "willfully" in a variety of contexts. For example, in *Screws*, the Court considered the meaning of the term in a provision, then codified at 18 U.S.C. 52,[4] making it a crime for a person acting under color of law willfully to deprive another of a right secured by the Constitution or laws of the United States. 325 U.S. at 93 (opinion of Douglas, J.). In order to avoid concerns that the provision might otherwise be vague or indefinite, the plurality adopted a "narrow construction," holding that a defendant acts willfully within the meaning of the provision if he acts "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite." *Id.* at 105. That standard does not require proof that a defendant had specific knowledge of the constitutional right at issue. *Id.* at 106 ("[t]he fact that the defendant[] may not have been thinking in constitutional terms is not material"). Rather, it is sufficient that the defendant acted in reckless disregard of specifically determined constitutional rights. *Id.* at 104. The analysis of the *Screws* plurality has been followed by the Court in subsequent decisions. See, *e.g.*, *United States* v. *Lanier*, 117 S. Ct. 1219 (1997). See also, *e.g.*, *United States* v. *Johnstone*, 107 F.3d 200, 209-210 (3d Cir. 1997) (upholding a defendant's conviction for violating Section 242, where the jury was instructed that it could convict "even if [it found] that [the defendant] had no real familiarity with the Constitution or with the particular constitutional right involved * * *, provided that [it found] that the defendant intended to accomplish that which the [C]onstitution forbids").[5]

[4] The successor statute, which is substantially unchanged, is presently codified at 18 U.S.C. 242.

[5] Cf., *e.g.*, *Illinois Cent. R.R.*, 303 U.S. at 243 ("willful" in some statutes "is employed to characterize conduct marked by careless disregard whether or not one has the right to act[,]" *i.e.*, actions by a person "who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements") (internal quotation marks omitted). The Court has taken a similar approach to the term "willfully" when considering statutes authorizing the imposition of civil penalties for willful violations of certain employment statutes. See *Hazen Paper Co.* v. *Biggins*, 507 U.S. 604, 614 (1993) (under the Age Discrimination in Employment Act, conduct is willful if it reflects knowing or reckless disregard of the requirements of the statute; "this standard [is] consistent

Thus, even where the Court was concerned to adopt a narrow construction of the term "willfully," it required proof only that the defendant was reckless as to the illegality of his conduct, and specifically rejected the idea that proof of specific knowledge of the law was necessary to support a criminal conviction.

2. In certain contexts, however, the Court has interpreted the term "willfully" as requiring proof that the defendant acted with knowledge that his conduct was illegal. Criminal tax cases are the principal example of this construction. In those cases, the Court has interpreted the term to require proof of "a voluntary, intentional violation of a known legal duty." *Cheek*, 498 U.S. at 201 (quoting *United States* v. *Pomponio*, 429 U.S. 10, 12 (1976) (per curiam)). The Court has emphasized, however, that this construction of "willfully" is a special and unusually stringent one, reflecting the concern that "[t]he proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws." *Id.* at 199-200. See also *id.* at 200 ("This special treatment of criminal tax offenses is largely due to the complexity of the tax laws."); *United States* v. *Bishop*, 412 U.S. 346, 361 (1973) (the Court's interpretation of "willfully" in criminal tax cases "implements the pervasive intent of Congress to construct penalties that separate the

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with the meaning of 'willful' in other civil and criminal statutes"); *McLaughlin*, 486 U.S. at 133 (same under the Fair Labor Standards Act); *TWA, Inc.* v. *Thurston*, 469 U.S. 111, 126 (1985).

purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers.").

The Court in one other context has interpreted the term "willfully" to require proof of knowledge of illegality. See *Ratzlaf, supra.* In *Ratzlaf*, the Court held that 31 U.S.C. 5322(a) (1988), which imposed penalties for "willfully violating," *inter alia*, the anti-structuring provision of 31 U.S.C. 5324(3) (1988), required proof that a defendant know that currency structuring is illegal.[6] 510 U.S. at 149. The Court reached that conclusion for three principal reasons. First, unless "willfully" was construed in this way, it would have been rendered superfluous in light of Section 5324(3)'s requirement that a currency transaction be structured for the "purpose of evading" reporting requirements. *Id.* at 140. Second, the statute's "omnibus 'willfulness' requirement, when applied to other provisions in the same subchapter," had consistently been read to require "a 'specific intent to commit the crime,'" *id.* at 141, and the Court found "strong[] cause to construe a single formulation * * * the same way each time it is called into play," *id.* at 143 (citations and emphasis omitted). Finally, the Court, drawing an analogy to the tax laws, expressed the view that persons might have a variety of legitimate reasons for structuring transactions to avoid reporting requirements, just as they often structure their transactions to reduce or avoid the impact of the tax laws. *Id.* at 144-146. The Court

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[6] After the Court's decision in *Ratzlaf*, Congress amended the relevant provisions to provide that proof of knowledge of illegality is not required to establish a structuring offense. See Money Laundering Suppression Act of 1994, Pub. L. No. 103-325, Tit. IV, § 411, 108 Stat. 2253.

therefore viewed a requirement of knowledge of illegality as an important way to ensure that such persons were not subject to prosecution. *Ibid.*

As the Court has since noted, its holding in *Ratzlaf* did not reflect a view that the term "willfully," when used in a criminal statute, generally requires proof of knowledge of illegality. See *Bates* v. *United States*, 118 S. Ct. 285, 290 n.6 (1997) ("*Ratzlaf* decided only, in the particular statutory context of currency structuring, that knowledge of illegality was an element of 31 U.S.C. § 5322(a) as that provision was then framed."). Rather, *Ratzlaf*, like the criminal tax cases, reflects the application of a narrow definition of the term "willfully," which the Court viewed as required by unusual features of the statutory scheme there at issue.

B. Proof Of Specific Knowledge Of The Federal Licensing Requirement Is Not Required To Establish A Willful Violation Of Section 922(a)(1)(A)

An analysis of the structure and purpose of the Firearms Owners' Protection Act (FOPA), which added the willfulness requirement at issue in this case to federal firearms law, establishes that proof of a defendant's general knowledge of illegality is sufficient to show willfulness, and that proof that a defendant had specific knowledge of the federal licensing requirement is not required to support a conviction for willfully dealing in firearms without a license.

1. As originally enacted in 1968, neither Section 922(a)(1)(A) nor the other criminal prohibitions of the Gun Control Act contained a scienter requirement. Rather, in a separate sentencing provision applying to the Act as a whole, the Gun Control Act provided

that "[w]hoever violates any provision of this chapter * * * shall be fined not more than $5,000, or imprisoned not more than five years, or both." 82 Stat. 1223-1224 (18 U.S.C. 924(a) (1970)).

In 1986, Congress enacted the Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449. One provision of FOPA added a scienter requirement to the Gun Control Act's penalty provision, to reflect Congress's concern that the absence of such a requirement had resulted in "severe penalties for unintentional missteps." *United States* v. *Collins*, 957 F.2d 72, 74 (2d Cir.) (quoting 132 Cong. Rec. 9590 (1986) (statement of Sen. Hatch)), cert. denied, 504 U.S. 944 (1992). Specifically, FOPA divided violations of the Gun Control Act into two classes and required proof of a knowing violation as to one class (18 U.S.C. 924(a)(1)(A), (B), and (C)) and proof of a willful violation as to the other (18 U.S.C. 924(a)(1)(D)). § 104(a)(1), 100 Stat. 456.[7]

It is well settled (and undisputed in this case) that, to prove a "knowing[]" violation within the meaning of Section 924(a)(1), the government need only show that the defendant had knowledge of the pertinent facts,

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[7] Generally, Congress required proof of knowing violations for the more self-evidently serious offenses in the Gun Control Act, including making false statements, possessing dangerous devices such as machine guns and semiautomatic assault weapons, transporting firearms with obliterated serial numbers, and importing firearms and ammunition. See 18 U.S.C. 924(a)(1)(A), (B), and (C). Conversely, Congress generally required proof of willful violations as to firearms offenses that are more regulatory in nature, such as the unlicensed manufacture, transportation, and dealing of firearms. See 18 U.S.C. 924(a)(1)(D). See generally, *e.g.*, *Andrade*, 1998 WL 32345, at *8 n.2.

and need not prove that the defendant knew his conduct to be unlawful. See, *e.g.*, *United States* v. *Allah*, 130 F.3d 33, 39 (2d Cir. 1997), petitions for cert. pending, Nos. 97-6915 & 97-7418; *United States* v. *Hayden*, 64 F.3d 126, 130 (3d Cir. 1995); *United States* v. *Langley*, 62 F.3d 602, 606-607 (4th Cir. 1995) (en banc), cert. denied, 116 S. Ct. 797 (1996); *United States* v. *Obiechie*, 38 F.3d 309, 315 (7th Cir. 1994); *United States* v. *Hern*, 926 F.2d 764, 767 n.5 (8th Cir. 1991); *United States* v. *Sherbondy*, 865 F.2d 996, 1002 (9th Cir. 1988).[8] It is also undisputed that, by applying the contrasting term "willfully" to certain violations of the Gun Control Act, Congress intended to require a higher level of scienter than applied to the offenses requiring a knowing violation. See, *e.g.*, *Allah*, 130 F.3d at 39 (collecting cases); *United States* v. *Rodriguez*, 132 F.3d 208, 211 (5th Cir. 1997); *Obiechie*, 38 F.3d at 314.

Petitioner argues (Br. 13-14) that Section 924(a)(1)'s distinction between knowing and willful violations demonstrates that Congress intended the term "willfully" to require proof of a defendant's specific knowledge of the provision making his conduct unlawful. That is so, petitioner contends, because the latter interpretation of "willfully" is the only "reasonable" way to distinguish willful violations from

[8] Proof of a knowing violation does not necessarily require proof that the defendant had knowledge of the pertinent facts on all elements of the violation. See, *e.g.*, *Langley*, 62 F.3d at 605-607 (to prove a knowing violation of 18 U.S.C. 922(g)(1), which forbids convicted felons to possess firearms that have traveled in interstate commerce, the government need not prove that the defendant knew that the weapon had traveled in interstate commerce or that the defendant knew that his prior conviction was for a felony).

knowing ones. Pet. Br. 14 (quoting *Obiechie*, 38 F.3d at 315). The flaw in petitioner's argument is its unsupported assumption that the only way to give "willfully" a meaning that differs from "knowingly" is to interpret it as requiring a defendant's specific knowledge of the provision making his conduct illegal.[9] In fact, all but one of the common interpretations of "willfully" impose a significantly different and more demanding scienter requirement than is required by "knowingly," see pp. 12-18, *supra*, and those interpretations accomplish that effect without imposing the unusually heightened requirement to show specific knowledge of particular provisions of law. Accord *Allah*, 130 F.3d at 39-40 (interpreting "willfully" as requiring proof of general knowledge of illegality gives the term a distinct and more demanding meaning than the term "knowingly," without insisting on specific knowledge of the law).

2. A conclusion that "willfully" requires proof that a defendant had knowledge of the specific provision of law that he violated would be warranted only in rare and unusual circumstances. Cf. pp. 16-18, *supra*. Such circumstances are not present here. To the contrary, an analysis of the context and purpose of the Gun Control Act demonstrates that there is no warrant for imposing so stringent a *mens rea* requirement, and that proof of general knowledge or awareness of illegality is sufficient.

The conduct at issue in this case involves commercial dealing in a dangerous commodity, *i.e.*, firearms.

[9] The courts of appeals that have adopted petitioner's interpretation of Section 924(a)(1)(D) have also relied heavily on that assumption. See, *e.g.*, *Rodriguez*, 132 F.3d at 211; *Sanchez-Corcino*, 85 F.3d at 553-554.

Although the federal government has never generally regulated the private possession of firearms, it has closely regulated the sale of firearms, prohibiting all unlicensed dealing in them. See Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1214. Congress's findings upon enactment of the immediate predecessor to the Gun Control Act made clear the problems that justified the need for pervasive regulation of dealing in firearms:

> (a) The Congress hereby finds and declares—
>
> (1) that there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce, and that the existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;
>
> (2) that the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of such weapons is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;
>
> (3) that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible[.]

Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901, 82 Stat. 225. Similarly, a substantial number of the States and territories have imposed licensing requirements on dealing in firearms or have regulated the sale of firearms in other ways. See Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Treasury, *Firearms State Laws and Published Ordinances* v-vi (20th ed. 1994) (listing 24 states and territories that regulate gun dealers and manufacturers).

In light of this longstanding and pervasive scheme of regulation, it can hardly be argued that unlicensed dealing in firearms is the sort of commercial activity that citizens might think is freely permissible without any legal constraint. There is therefore no basis for presuming that only an extraordinarily elevated level of scienter—demanding proof of knowledge of specific legal requirements—could afford adequate protection against surprise. See *Allah*, 130 F.3d at 40 ("[F]irearms are inherently dangerous devices that have long been subjected to regulation, including licensing requirements. * * * [T]here was no need to introduce a 'willfully' element to inform gun dealers that unlicensed dealing was unlawful."). Cf. *United States* v. *Freed*, 401 U.S. 601, 609 (1971) (proof of knowledge of the registration law is not required in a prosecution for unlawful possession of unregistered hand grenades, because "one would hardly be surprised to learn that possession of hand grenades is not an innocent act").

An individual subject to the unlicensed firearms-dealing prohibition is particularly likely to be aware

of the presence of a regulatory backdrop. The proscription applies only to those who engage in a "regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms," and not to the casual or occasional seller. 18 U.S.C. 921(a)(21)(C). In this context, it is a fully sufficient protection against ensnaring the innocent that the government must prove that the defendant knew generally that his conduct was unlawful. See *United States* v. *Andrade*, No. 96-2309, 1998 WL 32345, at *5 (1st Cir. Feb. 3, 1998) ("Nothing indicates that Congress was concerned with protecting individuals who knew that their conduct was unlawful but might not be able to cite chapter and verse as to which precise provision made it so."). Of course, in this context, as in others, proof that the defendant consciously avoided discovering the illegality of his conduct would also satisfy the required mental state. Cf., *e.g.*, *United States* v. *Farouil*, 124 F.3d 838, 843 (7th Cir. 1997). Cf. also *Turner* v. *United States*, 396 U.S. 398, 417 (1970).

This Court's decision in *Staples* v. *United States*, 511 U.S. 600 (1994), upon which petitioner relies (Br. 24), is not to the contrary. *Staples* held that, in a prosecution under 26 U.S.C. 5861(d), which prohibits unregistered possession of certain firearms, including machineguns, the government was obliged to prove that the defendant was aware that the weapon he possessed had the characteristics that made it a machinegun. 511 U.S. at 602. In reaching that conclusion, the Court emphasized that "there is a long tradition of widespread lawful gun ownership by private individuals in this country." *Id.* at 610. That tradition, however, does not extend to the unlicensed business of dealing in firearms for profit. Moreover,

the Court in *Staples* required only that the government prove the defendant's knowledge of the facts; the Court did not cast doubt on its earlier holding in *Freed*, *supra*, that the government is not required to prove that the defendant was aware of the legal requirement that firearms must be registered. *Staples*, 511 U.S. at 609. See also *Rogers* v. *United States*, 118 S. Ct. 673, 675 (1998) (opinion of Stevens, J.) ("It is not, however, necessary to prove that the defendant knew that his possession was unlawful, or that the firearm was unregistered."). Nothing in *Staples* supports the conclusion that Section 924(a)(1)(D) should be read to require proof not just that a defendant who dealt in firearms without a license generally knew that his conduct was illegal, but also that he had specific knowledge of the federal licensing requirement.[10]

3. Requiring the government to prove that a defendant had specific knowledge of the provision making his conduct unlawful would significantly impede prosecutions for violations of the Gun Control Act. Direct proof of such knowledge will rarely be found. In some cases it will be possible for the government to introduce sufficient circumstantial evidence to *per-*

[10] The willfulness requirement in Section 924(a)(1)(D) applies not only to dealing in firearms without a license, but also to a number of other provisions of the Gun Control Act. See, *e.g.*, 18 U.S.C. 922(a)(2) (restricting interstate transport or shipping of firearms by licensed dealers); 18 U.S.C. 922(a)(3) (restricting out-of-state firearms purchases by persons without a federal license); 18 U.S.C. 922(n) (prohibiting interstate transport of firearms by persons under felony indictment); 18 U.S.C. 923 (imposing record-keeping requirements on licensed dealers). In these contexts, too, proof that the defendant acted with general knowledge that his conduct was illegal will suffice to insure that inadvertent or innocent violators are not subject to criminal penalties.

mit a jury to draw an inference that such knowledge was present. See, *e.g.*, *Rodriguez*, 132 F.3d at 212-213 (proof that the defendant engaged in counter-surveillance, was uneasy about the sale at issue, and had experience with firearms permitted the jury to infer that the defendant knew that a license was required to sell firearms to out-of-state residents). Even where the circumstantial evidence is *sufficient* to support an inference of specific knowledge, however, there is no assurance that a given jury in fact would rely on such circumstantial evidence to find guilt beyond a reasonable doubt.

In some cases, moreover, proving a defendant's specific knowledge of the provision rendering his conduct illegal—even circumstantially—would be quite difficult. Clandestine firearms dealers are not likely to acquaint themselves with the specific requirements of federal law that they are violating, or even to know whether it is federal, state, or local law they are violating. Nor are they likely to admit to having engaged in such legal research even if they conducted it. Yet such dealers may purposefully act with awareness that their surreptitious sales are unlawful. Foreclosing conviction in such cases would substantially diminish the effectiveness of the gun dealer laws. See, *e.g.*, *Andrade*, 1998 WL 32345, at *5 ("To impose such a requirement of detailed knowledge of the firearms statutes (to which few judges could pretend) would make an enforcement of the gun dealer laws very difficult. And the requirement goes well beyond what is needed to screen out an innocent who honestly thought his conduct was lawful.").

4. Petitioner advances five principal arguments in support of his claim that the term "willfully" in Section 924(a)(1)(D) should be interpreted as requiring proof of specific knowledge of the provision rendering a defendant's conduct illegal. The first—that any other interpretation of the term would fail to take account of Congress's intent in distinguishing willful from knowing violations—has already been addressed. See pp. 20-21, *supra*. Petitioner's remaining arguments are equally without merit.

a. First, there is no merit to petitioner's reliance (Br. 15-16) on 18 U.S.C. 922(a)(3). That subsection prohibits licensees from selling or delivering a firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the state of the licensee's place of business, except where the sale involves a rifle or shotgun, the transaction is face to face, and the transaction fully complies with the law of both the seller's and buyer's state. The subsection further "presume[s] * * * in the absence of evidence to the contrary, [that the licensee] had actual knowledge of the State laws and published ordinances of both States." Petitioner argues that that presumption demonstrates that proof of specific knowledge is generally required to prove a willful violation, because otherwise Congress would have had no need to establish the presumption.

Petitioner's argument confuses what is *sufficient* with what is *necessary*. By creating a presumption that gun dealers know the law in a particular context, Congress created a presumption that would, if unrebutted, be *sufficient* to establish that a violation was willful. But that does not suggest that Congress believed that such proof was *necessary* to establish a willful violation. To the contrary, the presumption created by Congress is entirely consistent with an interpretation of "willfully" as requiring proof of general knowledge of illegality. When "willfully"

is so interpreted, Congress's presumption simply serves, if unrebutted, to provide proof of willfulness in the requisite sense.

b. Petitioner (Br. 14) also cites 18 U.S.C. 923(d)(1)(C) and (D), which permit the denial or revocation of a firearm dealer's license upon a showing of a willful violation of the requirements of the Gun Control Act. According to petitioner (Br. 14-15 (citing cases)), when FOPA was enacted the lower courts had adopted a uniform interpretation of the term "willfully" as used in that provision, and Congress must be presumed to have adopted that interpretation of the term when it enacted FOPA. Petitioner's argument is incorrect.

First, a number of the cases upon which petitioner relies emphasize that the meaning of the term "willfully" depends on its particular statutory context, and expressly distinguish the definitions they adopt from the definition that might apply in a criminal context. See, *e.g.*, *Prino* v. *Simon*, 606 F.2d 449, 451 (4th Cir. 1979); *Lewin* v. *Blumenthal*, 590 F.2d 268, 268-269 (8th Cir. 1979); *Shyda* v. *Director, Bureau of Alcohol, Tobacco & Firearms*, 448 F. Supp. 409, 415 (M.D. Pa. 1977) ("In a civil context such as this, the definition of 'willfully' is dependent upon the specific statutes involved. * * * There is no requirement of bad purpose as might be imposed were the Court faced with determining the definition of willfulness in a criminal prosecution."). Second, rather than reflecting a clear consensus, the cases in fact reflect a variety of different formulations.[11]

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[11] See, *e.g.*, *Stein's, Inc.* v. *Blumenthal*, 649 F.2d 463, 467 (7th Cir. 1980) (as used in Section 923(d)(1)(C), "willfully" "does not require bad purpose or evil motive * * *. The Secretary need only prove that the petitioner knew of his legal obligation and purposefully disregarded or was plainly indifferent to the recordkeeping requirements[;]" a violation is willful "if a person 1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or 2) acts with careless disregard of statutory requirements") (internal quotation marks omitted); *Perri* v. *Department of Treasury*, 637 F.2d 1332, 1336 (9th Cir. 1981) (willfulness "is established when a dealer understands the requirements of the law, but knowingly fails to follow them or was indifferent to them"); *Prino*, 606 F.2d at 451 ("'[W]illful' means action taken knowledgeably by one subject to the statutory provisions in disregard of the action's legality. No showing of malicious intent is necessary. A conscious, intentional, deliberate, voluntary decision properly is described as willful, regardless of venal motive.") (internal quotation marks omitted); *Rich* v. *United States*, 383 F. Supp. 797, 800 (S.D. Ohio 1974) (the government must prove "purposeful, intentional conduct" rather than "mere negligence").

Third, although the varying definitions reflected in the cases are rather unclear, see note 11, *supra*, none of the cases adopts the definition petitioner argues for here: that a willful violation requires proof that the defendant had specific knowledge of the law and intentionally violated it. Fourth, we have located no suggestion in the extensive legislative history of FOPA that Congress intended to adopt any of the varying definitions of "willfully" articulated in the handful of cases that had defined the term for purposes of civil sanctions under Section 923(d)(1).

c. Petitioner relies (Br. 11, 16-17) on this Court's decisions in *Cheek* and *Ratzlaf*. That reliance is misplaced.

As we have explained, see pp. 16-17, *supra*, the unusually stringent willfulness requirement imposed in *Cheek* and the other criminal tax cases reflects the

daunting complexity of the tax laws, and the concern that innocent citizens, attempting in good faith to comply with their tax obligations, not be criminally punished for inadvertent errors. The firearms statutes at issue in this case, however, are not remotely comparable to the tax code in complexity. Moreover, the conduct at issue in this case involves the highly regulated business of dealing in firearms, which are a dangerous commodity. In that context, interpreting "willfully" as requiring proof of general knowledge of illegality will fully protect "an innocent who honestly thought that his conduct was lawful." *Andrade*, 1998 WL 32345, at *5.

For similar reasons, this Court's decision in *Ratzlaf* does not support petitioner's claim here. *Ratzlaf's* interpretation of the term "willfully" rests on three primary considerations: the need to avoid an interpretation of the term that would render it superfluous; the need to ensure that the term was given a consistent interpretation with respect to all of the various provisions to which it applied; and the concern that a narrower interpretation might sweep up innocent conduct. 510 U.S. at 141-146; see pp. 17-18, *supra*.

Those considerations are not present here. Because Section 922(a)(1)(A) flatly prohibits dealing in firearms without a license, making no reference to a requisite mental state, the term "willfully" in Section 924(a)(1)(D) would not be rendered superfluous no matter how it was interpreted. See *Andrade*, 1998 WL 32345, at *6; *Allah*, 130 F.3d at 39; *Hayden*, 64 F.3d at 131.[12] Nor would interpreting "willfully" as

[12] Petitioner points out one structural similarity between Section 924(a)(1)(D) and the statute at issue in *Ratzlaf*: each

requiring proof of general knowledge of illegality create concerns about the proper scope of Section 924(a)(1)(D) as it related to provisions other than the licensing requirement in Section 922(a)(1)(A). See note 10, *supra*. Finally, when "willfully" is interpreted to require proof of general knowledge of illegality, there is no risk of criminalizing innocent conduct.

In sum, the interpretation of "willfully" in the criminal tax cases and in *Ratzlaf* does not support petitioner's submission that proof of the defendant's knowledge of the specific provision he is violating is required to establish a willful violation of Section 922(a)(1)(A). Indeed, even in the criminal tax and structuring settings, where the Court determined that a showing of knowledge of the law is required to establish willfulness, it is not altogether clear that

sets out penalties for those who "willfully violate[]" one of a number of provisions. Pet. Br. 16-17. According to petitioner, that formulation necessarily implies that a defendant must have specific knowledge of the provision he is said to have "willfully violated." *Ibid.* This Court, however, has rejected that precise argument, albeit in the context of the phrase "knowingly violates any such regulation." See *United States* v. *International Minerals & Chem. Corp.*, 402 U.S. 558, 562 (1971) ("We * * * see no reason why the word 'regulations' should not be construed as a shorthand designation for specific acts or omissions which violate the Act. The Act, so viewed, does not signal an exception to the rule that ignorance of the law is no excuse."). Similarly here, Section 924(a)(1)(D)'s requirement of proof of a willful violation simply refers to conduct that violates a pertinent provision and is committed willfully, *i.e.*, with a general awareness of illegality. Cf. *Langley*, 62 F.3d at 605 ("it is highly likely that Congress used section 924(a) simply to avoid having to add 'willful' or 'knowing' into every subsection of section 922") (quoting *Sherbondy*, 865 F.2d at 1002).

the Court contemplated proof that the defendant is acquainted with the specific provision of law that he violated.[13] Cf. 1 L. Sand et al., *Modern Federal*

[13] The Court in *Pomponio* approved, as adequately defining "willfully" in a criminal tax case, instructions to the jury that the government was required to prove that the defendants acted "with the specific intent to do something which the law forbids, that is to say with [the] bad purpose either to disobey or to disregard the law" and "purposely intending to violate the law." 429 U.S. at 11 & n.2. See also *United States* v. *McGuire*, 79 F.3d 1396, 1405-1406 (in a criminal tax case, the district court properly instructed the jury that the government was required to prove that the defendant acted "with bad purpose either to disobey or disregard the law"), reheard en banc on other grounds, 99 F.3d 671 (5th Cir. 1996), cert. denied, 117 S. Ct. 2407 (1997). And the courts of appeals that have implemented *Ratzlaf* have adopted a variety of formulations that appear to fall short of the level of intent petitioner advocates here. See, *e.g.*, *United States* v. *Dashney*, 117 F.3d 1197, 1201-1202 (10th Cir. 1997) (after *Ratzlaf*, affirming a structuring conviction under 31 U.S.C. 5322(a), where the jury was instructed that the government was required to prove that the defendant acted "with bad purpose to disobey or disregard the law"); *United States* v. *Hurley*, 63 F.3d 1, 16 (1st Cir. 1995) ("We think that the thrust of *Ratzlaf*'s willfulness requirement is met if persons engaged in depositing broken down amounts are generally conscious that their laundering operation is illegal, even if they do not know the precise requirements of the law."), cert. denied, 116 S. Ct. 1322 (1996); *United States* v. *Oreira*, 29 F.3d 185, 188 (5th Cir. 1994) (after *Ratzlaf*, it would be proper to instruct the jury in a structuring case that the government must prove that the defendant acted "with bad purpose either to disobey or disregard the law"); but see, *e.g.*, *Peck* v. *United States*, 73 F.3d 1220, 1223-1227 (1995) (after *Ratzlaf*, it was error to refuse to instruct the jury that the government was required to prove that the defendant knew that structuring was a crime, and to instead instruct that the government was required to prove that the defendant acted

Jury Instructions ¶ 3A.01, at 3A-18 (1997) ("'Willfully' means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids, that is to say with the bad purpose to disobey or to disregard the law.") (citing, *inter alia*, *Ratzlaf*, *supra*, and *Pomponio*, *supra*).

d. Finally, petitioner (Br. 20-23) and amicus NACDL (Br. 26) cite a number of lower-court cases that they claim interpret the terms "willfully" or "knowingly" in other statutes to require proof of specific knowledge of illegality. These cases do not support petitioner's claim in the present case. Because "willfully" takes its meaning from its context, *Ratzlaf*, 510 U.S. at 141, the mere fact that it is given one interpretation in one statute sheds no light on the question whether it should be given the same interpretation in a different one. Thus, it should not be surprising that there are numerous lower-court opinions interpreting "willfully" as not requiring proof of specific knowledge of the law, or, in some contexts, as not requiring proof of knowledge of the law at all. See, *e.g.*, *United States* v. *Gabriel*, 125 F.3d 89, 99-102 (2d Cir. 1997) (proof of willfulness for purposes of 18 U.S.C. 2(b) (willfully causing another to commit unlawful act) does not require proof of knowledge of the law) (citing cases); *United States* v. *English*, 92 F.3d 909, 914-916 (9th Cir. 1996) (same as to 15 U.S.C. 77x (interstate securities fraud)); *United States* v. *Daughtry*, 48 F.3d 829, 831-833 (same as to 18 U.S.C. 1001 (false statements)), cert. granted, vacated, and remanded, 516 U.S. 984 (1995), adopted in pertinent part on remand, 91 F.3d 675, 675-676 (4th Cir. 1996);

with "bad purpose either to disobey or disregard the law"), on rehearing, 106 F.3d 450 (2d Cir. 1997).

United States v. *Phillips*, 19 F.3d 1565, 1576-1584 (11th Cir. 1994) (same as to 29 U.S.C. 186(d)(2) (Taft-Hartley Act) and 29 U.S.C. 1131 (ERISA)) (citing cases), cert. denied, 514 U.S. 1003 (1995). See also note 13, *supra*.[14]

C. The Legislative History Does Not Justify A Higher Mental State For Willfulness Than General Knowledge Of Illegality

Petitioner (Br. 17-20) and his amici (NACDL Br. 5-18; Gun Owners Foundation Br. 10-14) also rely heavily on the legislative history of FOPA. Because application of traditional tools of statutory construction is sufficient here, resort to that history is not necessary to a proper determination of the issue

[14] Moreover, some of the cases upon which petitioner and his amicus rely reflect the mistaken assumption that the interpretation of "willfully" in the criminal tax cases and *Ratzlaf* is generally applicable, rather than being an unusual interpretation applied only in special circumstances. See, *e.g.*, *United States* v. *Hopkins*, 53 F.3d 533, 540 (2d Cir. 1995) (referring to "[t]he prevalent interpretation of 'willfully' to mean intentionally violating a law of whose existence the defendant was aware"), cert. denied, 518 U.S. 1072 (1996); *United States* v. *Frade*, 709 F.2d 1387, 1391 (11th Cir. 1983) (in criminal statutes, "willfully" "generally connotes a voluntary, intentional violation of a known legal duty") (quoting *Bishop*, 412 U.S. at 360). Finally, a number of the cases that petitioner cites speak of general knowledge of illegality, rather than supporting a requirement that the government prove a defendant's specific knowledge of the provision he is charged with violating. See, *e.g.*, *United States* v. *North*, 910 F.2d 843, 884 (1990) (noting parties' agreement that 18 U.S.C. 2071(b) (prohibiting willful destruction of public documents) required proof "that [defendant] acted with knowledge that his conduct was unlawful"), on rehearing, 920 F.2d 940 (D.C. Cir.), cert. denied, 500 U.S. 940 (1991).

presented in this case. In any event, however, the legislative history undermines rather than supports petitioner's claim.

1. FOPA had its genesis in bills that were introduced in 1979 by Senator McClure in the Senate (S. 1862, 96th Cong., 1st Sess.), and Representative Volkmer in the House (H.R. 5225, 96th Cong., 1st Sess.), as an outgrowth of Senate hearings into what the bill's sponsors considered "overzealous" enforcement of the Gun Control Act of 1968. See H.R. Rep. No. 495, 99th Cong., 2d Sess. 3 (1986).

No action was taken on the bills, and Senator McClure reintroduced his bill in 1981, with changes not relevant here. S. 1030, 97th Cong., 1st Sess.; see S. Rep. No. 583, 98th Cong., 2d Sess. 2 (1984). That bill was favorably reported, with amendments, by the Senate Judiciary Committee in 1982, S. Rep. No. 476, 97th Cong., 2d Sess., but no action was taken by the full Senate. Senator McClure then reintroduced the identical bill in 1983. S. 914, 98th Cong., 1st Sess.; see S. Rep. No. 583, *supra*, at 2.

As first proposed, the bills required the government to prove that the defendant acted "willfully" as an element of all firearms offenses. For example, S. 1030, as introduced and as favorably reported by the Senate Judiciary Committee in 1982, would have simply amended Section 924(a) to add the word "willfully," so that the statute would read: "whoever willfully violates any provision of this chapter" is guilty of a felony. S. Rep. No. 476, *supra*, at 9. The 1982 Senate Report explained the intent behind this provision as follows:

> [Section] 103(a) inserts the word "willfully" into the general penalty clause contained in 18 U.S.C.

924(a). The purpose is to require that penalties be imposed only for willful violations—those intentionally undertaken in violation of a known legal duty. *United States* v. *Bishop*, 412 U.S. 346 (1973); *Pomponio* v. *United States*, 429 U.S. 10 (1976). Existing law for the most part requires at best a general intent, so that even inadvertent violations, and those made in the best of faith, may be the subject of prosecution. Improper prosecutions under such conditions * * * were documented in hearings before the Committee * * *. This subsection is designed to guarantee against such practices. It is moreover designed to provide enforcing agents, prosecutors and courts with a clear delineation of the type of offenders against whom the law is directed. It removes the tendency of statutes permitting conviction for inadvertent violations to "ease the prosecutor's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries." *Morissette* v. *United States*, 342 U.S. 246, 263 (1952).

S. Rep. No. 476, *supra*, at 22.

The Senate did not act on the bill in 1982. When the bill was reintroduced as S. 914 in the 98th Congress in 1983, it contained the same willfulness requirement. S. 914, *supra*, at 16. That provision, however, encountered substantial opposition from law enforcement interests. In particular, the Bureau of Alcohol, Tobacco and Firearms, presenting the position of the Reagan Administration, objected that the proposed willfulness requirement "will make it more difficult to successfully prosecute cases under the Act." *The*

Federal Firearms Owner Protection Act: Hearings on S. 914 Before the Senate Comm. on the Judiciary, 98th Cong., 1st Sess. 52 (1983); see also *id.* at 22, 38, 48; S. Rep. No. 583, *supra*, at 2-3, 20-21.

The bill was therefore revised in committee. The structure of Section 924(a) was changed to adopt the Administration's recommendation that certain offenses should require proof of a knowing violation of the Act, while the remainder would require proof that the defendant acted willfully. In addition, the committee substantially altered its view of the proper definition of the term "willfully." The Senate Report accompanying the bill explained these developments:

> Paragraph (1) of Section 104 makes a major change in 18 U.S.C. 924(a) by requiring for the first time the proof of criminal states of mind with respect to all of the activities proscribed in Chapter 44. Under existing law, * * * all violations constitute felonies. While some activities proscribed in Chapter 44 contain[] a criminal state of mind, many do not. As a result, persons can be subject to prosecution and harsh penalties for what are essentially technical violations of a regulatory scheme. * * *
>
> As introduced, S. 914 would have required the prosecution to prove beyond a reasonable doubt that any offense under Chapter 44 had been committed "willfully." The purpose of that change was to avoid prosecutions in cases where, for instance, a licensee carelessly committed a technical recordkeeping violation or other minor, inadvertent infraction. However, the Committee was receptive to concerns expressed by the Administration that requiring a "willful" state of mind in

some instances could pose legitimate law enforcement problems.

For this reason, the Committee amendment specifies a "knowing" state of mind with respect to offenses that involve the greatest moral turpitude and danger from a justified law enforcement standpoint. Thus, proposed Sections 924(a) (1) through (4) provide for criminal penalties where the offender knowingly commits specified offenses. Otherwise, under proposed 18 U.S.C. 924(a)(5), a "willful" state of mind is applicable. *For purposes of 18 U.S.C. 924(a), the Committee intends "willful" conduct to cover situations where the offender has actual cognizance of all facts necessary to constitute the offense, but not necessarily knowledge of the law.*

S. Rep. No. 583, *supra*, at 19-20 (footnotes omitted and emphasis added).

The 1984 bill, as amended, was never brought to the floor of the Senate, and the Senate did not take action on it. At the outset of the 99th Congress, however, Senator McClure reintroduced essentially the same bill, as S. 49. See 131 Cong. Rec. 24 (1985). Because the bill had already been approved by the Judiciary Committee, it was not referred to committee and went straight to the floor of the Senate. *Ibid.* During debate on the bill in the Senate, Senator Hatch, the floor manager of the bill, explained to the Senate that "the legislative history of the report to accompany S. 914 from the 98th Congress * * * is the authoritative source for the intent of the Judiciary Committee." 131 Cong. Rec. 18,186 (1985); see also *id.*

at 18,170 (statement of Sen. Symms).[15] The bill was considered and passed by the Senate, without pertinent amendment, on July 9, 1985. See *id.* at 18,155-18,237.

2. Contemporaneously with the introduction of S. 49 in the Senate, Representative Volkmer introduced corresponding legislation (H.R. 945) in the House of Representatives. See 131 Cong Rec. 1847-1848 (1985); H.R. Rep. No. 495, *supra*, at 4. Following hearings by its Subcommittee on Crime, the House Judiciary Committee rejected H.R. 945. See H.R. Rep. No. 495, *supra*, at 21.[16] In explaining its reasons for rejecting H.R. 945, the Committee addressed among other things the provision in H.R. 945 requiring "proof of 'willfulness' to convict for many [Gun Control Act]

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[15] During the Senate debate, supporters of the bill described their understanding of the effect of the bill's imposition of a requirement that violations be shown to be knowing or willful. See 131 Cong. Rec. 18,155 (1985) (statement of Sen. McClure) (bill will "[m]andate an element of criminal intention"); *id.* at 18,178 (statement of Sen. Hatch) ("bill will provide a mens rea standard for violations under the code and redirect enforcement efforts toward violent intentional crimes, instead of recordkeeping errors"); *ibid.* ("No longer is honest intent irrelevant; most violations must be proven willful, undertaken with illegal intent."); *id.* at 18,182-18,183 (statement of Sen. Sasser) ("Now the Government must prove, beyond a reaonable[] doubt, that a violation was willful before it can obtain a conviction. A technical violation, by one who did not intend to break the law, can no longer form the basis of life-wrecking felon status.").

[16] As amicus NACDL observes (Br. 12, 15 n.11, 16), H.R. Rep. No. 495 has sometimes been incorrectly treated as the authoritative Committee Report on FOPA. See 1986 U.S.C.C.A.N. 1327. In fact, H.R. Rep. No. 495 was a report on an entirely different bill that was ultimately rejected by the House.

violations." *Id.* at 10. The Committee Report observed:

> Case law interpreting the criminal provisions of the GCA [has] required that the government prove that the defendant's conduct was knowing, but not that the defendant knew that his conduct was in violation of the law. The criminal law traditionally does not require proof that the defendant knew that his conduct was in violation of the law.
>
> It appears that the intent of the authors of the "willfulness" requirement of S. 49/H.R. 945 is that the prosecution have to prove that the defendant knew the details of the law, understood that his conduct would violate the law, and intentionally set out to violate the law. This would constitute an almost impossible, and almost unprecedented[,] burden on the prosecution. Proponents of the willfulness standard argue that the offenses for which the standard would apply are mere regulatory offenses, for which a conscious and specific intent to violate the law should be required. * * * The Committee believes that * * * a person who engages in the business of selling hand grenades or machine guns should not escape prosecution solely on the grounds that the government cannot produce witnesses to whom the defendant admitted knowledge that such conduct requires a federal license and a determination to violate the law.

Id. at 10-11 (footnotes omitted).

As the result of this and other concerns relating to S. 49 and H.R. 945, the House Judiciary Committee's Subcommittee on Crime drafted a substitute of its own, H.R. 4332, 99th Cong., 2d Sess. (1986), which the

Committee unanimously approved. See H.R. Rep. No. 495, *supra*, at 21. The Committee "specifically rejected the proposals in S. 49 and H.R. 945 that a standard of 'willfulness' be adopted as a state of mind requirement for certain offenses." *Id.* at 26. H.R. 4332 therefore provided for criminal penalties upon a showing of a knowing violation of the Gun Control Act. *Id.* at 40-41; 132 Cong. Rec. 6864 (1986).

When H.R. 4332 reached the House floor, however, Representative Volkmer offered an amendment in the nature of a substitute. 132 Cong. Rec. 6865 (1986). Representative Volkmer's amendment was similar to the bill passed by the Senate, and required proof of knowing violations of the Gun Control Act for some offenses and proof of willful violations for others. *Id.* at 6867. At the outset of the floor debate on his amendment, Representative Volkmer took the opportunity to explain the intended meaning of the term "willfully":

> MR. MCCOLLUM. I would like to enter a colloquy with the sponsor of this amendment, Mr. Volkmer, regarding the meaning of the term "willfulness" as it appears in his amendment. My purpose is to clarify the congressional intent with regard to "willfulness." Is the gentleman agreeable?
>
> MR. VOLKMER. I am.
>
> MR. MCCOLLUM. I would like to know if it is the gentleman's intent to imply the same meaning of the term "willfulness" that the other body intended. The Judiciary Committee in the other body filed a report on the predecessor of S. 49, the companion to your bill, H.R. 945, during the last

Congress. In the Judiciary Report 98-583 on page 20, the Judiciary Committee of the other body stated:

> For purposes of 18 U.S.C. 924(a), the committee intends "willful" conduct to cover situations where the offender has actual cognizance of all of the facts necessary to constitute the offense, but not necessarily knowledge of the law.

Is this intent consistent with the gentleman's understanding of the meaning of the term "willful" in the gentleman's substitute?

MR. VOLKMER. Yes, it is identical to the Senate meaning.

MR. MCCOLLUM. So by adopting the gentleman's language, the House will intend the same interpretation that the other body intends. I thank the gentleman from Missouri.

Id. at 6870.

Despite Representative Volkmer's remarks, opponents attacked the amendment on the ground that use of the term "willfully" would require the prosecution "to show that the dealer was personally aware of every detail of the law, and that he made a conscious decision to violate the law." 132 Cong. Rec. 6875 (1986) (statement of Rep. Hughes); see also *id.* at 6881-6882 (statement of Rep. Smith). Conversely, supporters described the *mens rea* requirement imposed by the amendment in much narrower terms. See, *e.g.*, *id.* at 6861 (statement of Rep. Boehlert) ("the Government must prove that [the defendant's] actions were 'willful'—that the citizen violated the law with some sort of criminal intent"); *id.* at 6849 (statement of Rep. Alexander) (amendment protects gun owners from being prosecuted for "simple unintentional errors in obtaining a firearm," by "requiring that Federal agents prove criminal intent in the prosecution of such cases").

Following the debate, Representative Volkmer's substitute was passed by the House. 132 Cong. Rec. 7086-7088 (1986). The Senate then adopted the House version of the legislation, making several amendments, and an agreed-upon revision was passed by both Houses and signed by the President. See *id.* at 9598-9608, 9761, 12,073.

3. These extensive legislative materials provide substantial support for the conclusion that Congress did not intend, through the use of the term "willfully" in Section 924(a)(1)(D), to require proof of a defendant's specific knowledge of the law. The "authoritative" Senate Committee Report expressly indicates that Congress's use of the term "willfully" was not intended to require the government to prove a defendant's "knowledge of the law."[17] S. Rep. No. 583,

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[17] Amicus NACDL (Br. 10) speculates that the language in the Senate Report was "a mistake." That speculation is unwarranted. First, the idea that the Report inadvertently misdefined a crucial term in the bill is difficult to reconcile with the fact that the same language was read on the floor of the House, and was expressly adopted by the sponsor of the bill as stating the intended meaning of the term "willfully." 132 Cong. Rec. 6870 (1986) (statement of Rep. Volkmer). Second, the Senate Report's less demanding construction of "willfully" is easily understood when viewed in the context of the compromises made by the sponsors of the legislation in order to accommodate the objection of the Bureau of Alcohol, Tobacco and Firearms that the bill would "pose legitimate law enforcement problems." S. Rep. No. 583, *supra*, at 20.

supra, at 19-20; 131 Cong. Rec. 18,186 (1985) (statement of Sen. Hatch). See, *e.g.*, *Garcia* v. *United States*, 469 U.S. 70, 76 (1984) ("the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill"). The sponsor of the House version expressly endorsed this understanding of the term. 132 Cong. Rec. 6870 (1986) (statement of Rep. Volkmer). See *Federal Energy Admin.* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976) ("a statement of one of the legislation's sponsors * * * deserves to be accorded substantial weight in interpreting [a] statute"); *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384, 394-395 (1951) ("It is the sponsors that we look to when the meaning of the statutory words is in doubt."). And supporters of the bill, in both the House and Senate, repeatedly characterized the bill as imposing a general requirement of proof of criminal intent, without suggesting that the use of the term was intended to require proof that a defendant had specific knowledge of the law. See pp. 39 n.15, 42-43, *supra*. See also *Andrade*, 1998 WL 32345, at *5 ("The proponents of the willfulness requirement, to the extent that we can discover their comments, said nothing to suggest that the term was intended to go beyond its ordinary meaning, that is, awareness that one's conduct is unlawful.").

In support of the contrary view, petitioner and his amici muster only two items. First, they rely on S. Rep. No. 476, *supra*, a committee report prepared for a version of the bill that was not enacted by Congress. See pp. 35-38, *supra*. Such reports are not accorded significant weight. *Ratzlaf*, 510 U.S. at 148 n.18 ("[w]e do not find that Report, commenting on a bill that did not pass, a secure indicator of congressional intent"). According weight to S. Rep. No. 476 would

be particularly inappropriate, because that report was prepared in support of a version of the bill that was not enacted precisely because of concerns about the application of a stringent standard of willfulness to all violations of the Gun Control Act. See pp. 37-38, *supra*. Second, petitioner and his amici rely on statements made in a House Report that opposed enactment of the bill, and during floor debates by opponents of the bill. See pp. 39-40, 42, *supra*. The views of those who oppose a bill, however, are an extremely unreliable indicator of the proper interpretation of the bill. Indeed, amicus NACDL acknowledges (Br. 14) that one opponent's explanation of the willfulness requirement was "undoubtedly an exaggeration." See, *e.g.*, *Shell Oil Co.* v. *Iowa Dep't of Revenue*, 488 U.S. 19, 29 (1988) ("This Court does not usually accord much weight to the statements of a bill's opponents. '[T]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.'") (quoting *Schwegmann Bros.*, 341 U.S. at 394); *Carlson* v. *Green*, 446 U.S. 14, 41 n.7 (1980) (Rehnquist, J., dissenting) (the statement of an opponent of a bill "may be viewed as not unlike the 'parade of horribles' frequently marshaled against a pending measure and not the most reliable source of legislative history"); *NLRB* v. *Fruit & Vegetable Packers, Local 760*, 377 U.S. 58, 66 (1964) ("[W]e have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach.").

D. The Rule Of Lenity Is Inapplicable

Petitioner (Br. 26) invokes the rule of lenity, but that rule is inapplicable. "The rule of lenity applies only if, after seizing everything from which aid can be derived, . . . we can make no more than a guess as to what Congress intended." *United States* v. *Wells*, 117 S. Ct. 921, 931 (1997) (internal quotation marks omitted). In this case, the Court has ample basis upon which to conclude that Congress did not intend to require proof of specific knowledge of the law to support a conviction for willfully dealing in firearms. That conclusion is supported by the "venerable principle that ignorance of the law generally is no defense to a criminal charge." *Ratzlaf*, 510 U.S. at 149. It is supported by this Court's cases interpreting the term "willfully," which make clear that only in unusual circumstances will that term be understood to require proof that the defendant intentionally violated a known legal duty. See pp. 12-18, *supra*. And it is supported by the structure, purpose, and history of Section 924(a)(1)(D). See pp. 18-45, *supra*. "[T]his is not a case of guesswork reaching out for lenity." *Wells*, 117 S. Ct. at 931.

E. The Jury Was Properly Instructed On The Degree Of Knowledge Required To Show A Willful Violation

The jury in the present case was properly instructed that it could find petitioner guilty if it found that he had a purpose to disobey or disregard the law, even if he lacked specific knowledge of the law he was violating. With respect to the requirement of willfulness, the jury was told:

> A person acts willfully if he acts intentionally and purposely and with the intent to do something

> the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he must act with the intent to do something that the law forbids.
>
> * * * * *
>
> In this case, the government is not required to prove that [petitioner] knew that a license was required, nor is the government required to prove that he had knowledge that he was breaking the law. However, the government must prove that [petitioner] acted willfully. In order to satisfy this element, the government must prove that [petitioner] acted knowingly and purposely and that [petitioner] intended to commit an act which the law forbids.

J.A. 18-19.

That instruction specifically advised the jury that it could find petitioner guilty only if it found that he acted "with bad purpose to disobey or disregard the law." An instruction of this kind sufficiently informs the jury that general knowledge of illegality is required, because a defendant can act with a *purpose* to disobey the law only if the defendant is aware, at some level of generality, that the law prohibits his actions. Cf. 1 L. Sand et al., *Modern Federal Jury Instructions* ¶ 3A.01, at 3A-18 (1997). Moreover, the instruction properly informed the jury that the government was not required to prove that petitioner was aware of the specific law he was violating, or knew that a license was required before he could deal in firearms. See *Andrade*, 1998 WL 32345, at *4 (the jury was properly instructed that it could convict the

defendant of conspiracy to deal in firearms without a license if it found he acted "with knowledge that his conduct is unlawful," and that the government was not required to prove that "the defendant knew of the specific statute that he was charged with violating or that he intended to violate that particular statute").

The instruction added that: "nor is the government required to prove that he had knowledge that he was breaking the law." J.A. 19. That phrase did not negate the requirement, conveyed earlier in the instructions, that a purpose to disobey the law was necessary. In context, that phrase indicated only that the government was not required to prove that the defendant was certain that his conduct was illegal or that he knew his conduct violated the particular law at issue, *i.e.*, the licensing requirement. Taken as a whole, the instructions adequately conveyed the concept of willfulness. See, *e.g.*, *Estelle* v. *McGuire*, 502 U.S. 62, 72 (1991) (instructional language "must be considered in the context of the instructions as a whole").

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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FEBRUARY 1998

APPENDIX

1. Section 921(a)(21)(C) of Title 18 of the United States Code provides:

> The term "engaged in the business" means
>
> * * * * *
>
> (C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

2. Section 922 of Title 18 of the United States Code provides in pertinent part:

> (a) It shall be unlawful —
>
> (1) for any person —
>
> (A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce.

3. Section 924(a)(1) of Title 18 of the United States Code provides:

> Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever—
>
> (A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;
>
> (B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;
>
> (C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or
>
> (D) willfully violates any other provision of this chapter,
>
> shall be fined under this title, imprisoned not more than five years, or both.